

§ 430.312

based pay adjustments, and performance awards.

§ 430.312 Using performance results.

(a) Agencies must use performance appraisals as a basis for adjusting pay, granting awards, retaining senior executives, and making other personnel decisions. Performance appraisals also will be a factor in assessing a senior executive's continuing development needs.

(b) Agencies are required to provide appropriate incentives and recognition (including pay adjustments and performance awards under part 534, subpart D) for excellence in performance.

(c) A career executive may be removed from the SES for performance reasons, subject to the provisions of part 359, subpart E, as follows:

(1) An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the SES, or removed from the SES;

(2) An executive who receives two unsatisfactory annual summary ratings in any 5-year period must be removed from the SES; and

(3) An executive who receives less than a fully successful annual summary rating twice in any 3-year period must be removed from the SES.

§ 430.313 Training and evaluation.

(a) To assure effective implementation of agency performance management systems, agencies must provide appropriate information and training to agency leadership, supervisors, and senior executives on performance management, including planning and appraising performance.

(b) Agencies must periodically evaluate the effectiveness of their performance management system(s) and implement improvements as needed. Evaluations must provide for both assessment of effectiveness and compliance with relevant laws, OPM regulations, and OPM performance management policy.

(c) Agencies must maintain all performance-related records for no fewer than 5 years from the date the annual summary rating is issued, as required in 5 CFR 293.404(b)(1).

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§ 430.314 OPM review of agency systems.

(a) Agencies must submit proposed SES performance management systems to OPM for approval. Agency systems must address the system standards and requirements specified in this subpart.

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy, including the system standards specified at § 430.305.

(c) If OPM finds that an agency system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, OPM will identify the requirements that were not met and direct the agency to take corrective action, and the agency must comply.

Subpart D—Performance Appraisal Certification for Pay Purposes

SOURCE: 69 FR 45550, 45551, July 29, 2004, unless otherwise noted.

NOTE TO SUBPART D: Regulations identical to this subpart appear at 5 CFR part 1330, subpart D.

§ 430.401 Purpose.

(a) This subpart implements 5 U.S.C. 5307(d), as added by section 1322 of the Chief Human Capital Officers Act of 2002 (Title XIII of Public Law 107-296, the Homeland Security Act of 2002; November 25, 2002), which provides a higher aggregate limitation on pay for certain members of the Senior Executive Service (SES) under 5 U.S.C. 5382 and 5383 and employees in senior-level (SL) and scientific or professional (ST) positions paid under 5 U.S.C. 5376. In addition, this subpart is necessary to administer rates of basic pay for members of the SES under 5 U.S.C. 5382, as amended by section 1125 of the National Defense Authorization Act for Fiscal Year 2004. The regulations in this subpart strengthen the application of pay-for-performance principles to senior executives and senior professionals. Specifically, the statutory provisions authorize an agency to apply a higher maximum rate of basic pay for senior executives (consistent with 5

CFR part 534, subpart D, when effective) and apply a higher aggregate limitation on pay (consistent with 5 CFR part 530, subpart B) to its senior employees, but only after OPM, with OMB concurrence, has certified that the design and application of the agency's appraisal systems for these employees make meaningful distinctions based on relative performance. This subpart establishes the certification criteria and procedures that OPM will apply in considering agency requests for such certification.

(b) Senior executives generally may receive an annual rate of basic pay up to the rate for level III of the Executive Schedule under 5 U.S.C. 5382 and 5 CFR part 534, subpart D, when effective. Senior employees generally may receive total compensation in a calendar year up to the rate for level I of the Executive Schedule under 5 U.S.C. 5307(a) and 5 CFR 530.203(a). Only employees covered by an appraisal system that OPM, with OMB concurrence, certifies under this subpart are eligible for a maximum annual rate of basic pay for senior executives up to the rate for level II of the Executive Schedule (consistent with 5 U.S.C. 5382 and 5 CFR part 534, subpart D, when effective) and a higher aggregate pay limitation equivalent to the total annual compensation payable to the Vice President (consistent with 5 U.S.C. 5307(d) and 5 CFR 530.203(b)).

§ 430.402 Definitions.

In this subpart—

Appraisal system means the policies, practices, and procedures an agency establishes under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts B and C, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance. This includes appraisal systems and appraisal programs as defined at § 430.203 and performance management systems as defined at § 430.303.

GPRA means the Government Performance and Results Act of 1993.

OMB means the Office of Management and Budget.

OPM means the Office of Personnel Management.

Outstanding performance means performance that substantially exceeds

the normally high performance expected of any senior employee, as evidenced by exceptional accomplishments or contributions to the agency's performance.

Performance evaluation means the comparison of the actual performance of senior employees against their performance expectations and may take into account their contribution to agency performance, where appropriate.

Performance expectations means critical and other performance elements and performance requirements that constitute the senior executive performance plans (as defined in § 430.303) established for senior executives, the performance elements and standards that constitute the performance plans (as defined in § 430.203) established for senior professionals, or other appropriate means authorized under performance appraisal systems not covered by 5 U.S.C. chapter 43 for communicating what a senior employee is expected to do and the manner in which he/she is expected to do it, and may include contribution to agency performance, where appropriate.

Program performance measures means results-oriented measures of performance, whether at the agency, component, or function level, which include, for example, measures under the Government Performance and Results Act.

PRB means Performance Review Board, as described at § 430.310.

Relative performance means the performance of a senior employee with respect to the performance of other senior employees, including their contribution to agency performance, where appropriate, as determined by the application of a certified appraisal system.

Senior employee means a senior executive or a senior professional.

Senior executive means a member of the Senior Executive Service (SES) paid under 5 U.S.C. 5383.

Senior professional means an employee in a senior-level (SL) or scientific or professional position (ST) paid under 5 U.S.C. 5376.

§ 430.403 System certification.

(a) The performance appraisal system(s) covering senior employees must